

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

P. P.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2010110236

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 18, 2011, in Torrance.

P. P. (claimant) was not present; he was represented by his mother, E. P.<sup>1</sup>

Gigi Thompson, Manager, Rights Assurance, represented Harbor Regional Center (HRC or Service Agency).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 18, 2011.

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<sup>1</sup> Initials and family titles are used to protect the privacy of claimant and her family.

## ISSUES

1. Must the Service Agency fund claimant's participation in a social skills program at Focus on All-Child Therapies (FACT) in Culver City?
2. Must the Service Agency reimburse claimant's family for claimant's past participation in UCLA's Children's Friendship Program?

## EVIDENCE RELIED UPON

*Documents:* Service Agency's exhibits A-M; claimant's exhibits 1-5.

*Testimony:* Betty Tanius, Program Manager, HRC; Michael Tredinnick, Director, Children's Services, HRC; E. P., claimant's mother.

## FACTUAL FINDINGS

1. Claimant is a ten-year-old boy, born on December 22, 2000, who is a consumer of HRC based on his qualifying diagnosis of autism. He lives at home with his parents.
2. Claimant received early intervention services from the Service Agency prior to reaching three years of age. Claimant has not received services or supports from the Service Agency since 2004. Claimant's most recent Individual/Family Service Plan (IFSP)<sup>2</sup> meeting at HRC was on December 15, 2010. The IFSP reflects that claimant receives no services or supports from the Service Agency, other than the offer of a counselor to "be available for resources and referrals as needed or requested by parents."
3. At school, claimant achieves above-average grades in all subject areas; he is a diligent student, a good writer, and very articulate. But in a letter dated June 21, 2010, claimant's mother requested assistance from claimant's school district to address the bullying and isolation of claimant by his peers. (Ex. G.) At an Individual Education Plan (IEP)

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<sup>2</sup> Rather than using the terms "individual program plan" or "IPP" to describe the plan for each regional center client required by the Lanterman Developmental Disabilities Services Act (Lanterman Act), HRC uses "Individual/Family Service Plan" and "IFSP," terms derived from the federal Early Intervention Program for Infants and Toddlers with Disabilities, which is known in California as the "Early Start Program" and which applies only to infants and toddlers under the age of three. (Cal. Code Regs., tit. 17, § 52100 et seq.) For purposes of this matter, "IFSP" is deemed to be synonymous with "IPP."

amendment meeting held on July 2, 2010, and attended by school district personnel, claimant's mother, and claimant's HRC counselor, Stani Benesovsky, claimant's school district agreed to add a social skills goal to claimant's IEP and to add aide support for claimant during unstructured periods such as lunch and recess "to support his social interactions." (Ex. H.)

4. Claimant's mother notified the Service Agency by letter dated September 1, 2010, that she had enrolled claimant in the UCLA program, scheduled to begin in October 2010, and she requested that the Service Agency fund the program at rate of \$75 per group session for 12 weeks, plus a \$127 intake appointment fee. She also requested that the Service Agency pay for claimant's future participation in the FACT program, at a rate of \$45 per week. She noted that claimant had not received regional center services since the age of three, and that "we feel that now, in time of serious social crises for [claimant], [i]t is only fair that we will get your support. He needs to update his social skills to his age level as soon as possible." (Ex. E.) Claimant's mother did not request funding through the IFSP process.

5. By letter dated September 27, 2010, the Service Agency notified claimant's mother that it was denying her request to fund the FACT program and reimburse her for the costs of UCLA's Children's Friendship Program. The stated grounds for the denial were that (a) both programs are generic services in that they are open to the general public, not only to children with developmental disabilities, and families are expected to pay for them, and (b) "neither program is data driven, and therefore would not provide the appropriate reports or summaries that could help in tracking progress," citing Welfare and Institutions Code section 4646.5, subdivision (a)(2).<sup>3</sup> The Service Agency mentioned other generic services available to claimant, including Friendship Circle, the YMCA, and the city parks and recreation department. The Service Agency reiterated an offer it had made to have Family Behavioral Services (FBS) conduct an assessment to identify claimant's social behavior deficits and to provide claimant with an individualized program. "Parent involvement would be required for 100% of the program so that you could learn the techniques in how to assist [claimant] with his social deficits and continue to build his confidence among peers across all opportunities." (Ex. C.)

6. On November 2, 2010, claimant's mother submitted to HRC a Fair Hearing Request on claimant's behalf, appealing the denial of funding for the FACT program and reimbursement for the UCLA program. She wrote in her request that the Service Agency had incorrectly determined that the two programs do not collect individual progress data, and that both programs address claimant's "need for social skills training to be able to work independently with peers his age," and have a record of success. (Ex. B.)

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<sup>3</sup> All further statutory references are to the California Welfare and Institutions Code, unless otherwise stated.

7. After an informal meeting with claimant's mother, the Service Agency informed her by letter dated December 9, 2010, that it would not reverse its decision to deny the requested funding for the FACT program and reimbursement for the UCLA program. The Service Agency wrote that programs available through generic resources would benefit claimant with respect to his social skills deficits, that claimant was currently receiving support from his school district through participation in a weekly social group at school, that a social skills goal had been added to claimant's IEP, and that the FACT program is a social recreation program for which funding is prohibited under section 4648.5. The letter noted that no exception under section 4648.5 applies to claimant; Ms. Tanius, a Service Agency program manager, testified that school is the primary means for claimant to acquire social skills, and that claimant's mother has not discussed placing claimant out of the home. The Service Agency also wrote that claimant's mother had enrolled claimant in the UCLA program without obtaining HRC's agreement to fund that program, and that claimant's mother should explore obtaining reimbursement from claimant's insurance carrier.

8. By the time of claimant's December 15, 2010, IFSP meeting (see Factual Finding 2), claimant was in the UCLA program and he had completed one full 12-week session in the FACT program.<sup>4</sup> Claimant's IFSP noted that claimant was continuing to have social skills difficulties.

9. Claimant's January 20, 2011, IEP states that persons at the IEP meeting discussed new social skills goals for claimant, and that claimant's mother informed the school district that the UCLA program had been very helpful to claimant. She "shared that she has seen a great deal of growth in [claimant's] self-esteem and positive attitude since the amendment meeting held in July 2010." (Ex. I.)

10. UCLA's Children's Friendship Program "is designed for the 2nd to 6th grader who has difficulty making and/or keeping friends. During each group session children learn a new skill, practice with group members, receive coaching on their play skills and are given a homework assignment in which they try out their newly learned skill." (Ex. L.) The program is not limited to children with developmental disabilities, but is open to all children having difficulty socializing. Ms. Tanius testified that the UCLA program performs an intake process to determine whether the program is appropriate for a potential client; the program does not assess in order to identify goals or deficits, and is more a socialization opportunity than a social skills training program.

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<sup>4</sup> Claimant's mother does not seek reimbursement for claimant's past participation in the FACT program.

11. The FACT program is designed for children diagnosed with high-functioning autism. The program develops social skills goals for the consumer, teaching through the use of modules in a classroom setting. Parents participate, are informed about what has been worked on in each module, and are given assignments to enable them to help the client implement the module's lessons in a variety of settings in the community. Materials issued by the FACT social skills program state that FACT incorporates empirically-based interventions and applied behavior analysis to develop its clients' social skills, uses individualized goals and plans, performs an assessment for each new client, measures baseline behaviors, creates goals based on each client's needs, and submits written progress reports for continued funding if a client still requires services. "Weekly session data is taken and compared to baseline data to chart progress and goal achievement. This program is data driven, and meets the requirements of the Lanterman Act." (Ex. K.) Betty Tanius, a Program Manager at HRC, testified that she was told by FACT personnel that that FACT does track each client's progress, although goals are not created before service to a new client commences. She testified that the Lanterman Act requires an assessment before a regional center begins funding a program, but she conceded that several other regional centers have approved FACT for funding.

12. Michael Treddinick, Ph.D., the Service Agency's Director of Children's Services, and Ms. Tanius testified that FBS provides appropriate assessments of needs and deficits, observes clients and parents at school, at home and in the community, and interviews parents in order to devise a program tailored to each client's needs. Dr. Treddinick testified that an assessment, such as would be provided by FBS, is required to effectively address the issues of bullying and claimant's social skills deficits, and to determine the appropriate degree and nature of parent involvement. Ms. Tanius also testified that FBS models social skills training techniques to provide parents the skills to help children achieve success in all environments, not just in the home but in the community. For instance, an FBS behaviorist might accompany a client and the client's parent to the YMCA to show the parent how to help the client in that environment. Dr. Treddinick testified that appropriate services should be provided in claimant's own community, closer to his home than the UCLA and FACT programs.

13. When the Service Agency offered to provide funding to have FBS assess claimant's needs, however, it informed claimant's mother that FBS provided in-home services. It did not explain in detail the nature of services provided by FBS, nor did it inform her that those services include any activities in the community outside the home. Claimant's mother testified that claimant is not displaying any problems at home that the family cannot deal with. She testified that appropriate training for claimant must present him with real life situations, in naturalistic settings, with his peers. Based on the little she was told by the Service Agency about FBS, it did not appear to her that FBS would be able to provide such training.

14. Claimant's mother has taken claimant to the YMCA, but the other children there did not accept claimant and, because no one was training him while he was there, he became upset and frustrated. In 2009 the Service Agency suggested another generic program for claimant, Buddy Club, but acknowledged, as reflected in the Service Agency's consumer transaction notes, that Buddy Club did not have a group of peers at claimant's level of functioning. (Ex. J.) The Service Agency suggested, without first assessing claimant, that the program might benefit claimant by teaching him how to be a role model. Claimant's mother testified that claimant does not require training in how to be a role model; on the contrary, he requires a role model to help train him to interact with peers socially.

15. Claimant's mother testified that she has observed claimant being tormented by other children. She witnessed this on a school field trip and at a community basketball recreational program; she and claimant have also had to leave a family Father's Day party and an Independence Day party because claimant was targeted and bullied. Shortly after the school field trip, claimant's mother requested the July 2010 IEP meeting that resulted in the school district modifying claimant's IEP. (Factual Finding 3.) But during that summer of 2010, with claimant having no school to attend and no friends, and having experienced bullying and social ostracism, claimant told his mother that he hated his life and felt like a loser. Believing that she had to act immediately to alleviate claimant's isolation, she enrolled claimant in the FACT program and placed claimant on the waiting list for the UCLA program. She testified that, unlike the YMCA, FACT provides a protected environment for claimant to interact with his peers. FACT staff members intervene to correct inappropriate behavior in a way that claimant does not find embarrassing. At FACT, while claimant participated in the social skills program, claimant's mother participated in a parents' group, talking with a facilitator about social skills issues. She acknowledged that the FACT program is targeted for a broad spectrum of autistic children, and that claimant is higher functioning than many other participants, though occasionally non-developmentally disabled siblings participate. But she has not been able to find a better program closer to home. She believes that claimant's social skills are improving as a result of the intervention he has received at FACT and UCLA; claimant has started to make some friends at school. The Service Agency suggested that claimant's mother ask her insurance carrier to pay for the programs, but her plan at Kaiser does not provide such coverage.

16. The Service Agency contends that FACT does not address the needs of high-functioning autistic children, and that its services are provided in a clinical setting rather than in natural settings in the community where claimant lives. With respect to the UCLA program, the Service Agency contends that reimbursement is not warranted because claimant's mother should have requested an IFSP meeting before enrolling claimant in order to explain the program to the Service Agency, and to allow the Service Agency to explore in depth that program and all available options.

## LEGAL CONCLUSIONS

1. Cause exists to grant claimant's appeal in part and deny it in part, as set forth in Factual Findings 1 through 16, and Legal Conclusions 2 through 8. Specifically, the Service Agency is required to fund claimant's future participation in the FACT program, as limited by the Order set forth below. The Service Agency is not required to reimburse claimant's parents for claimant's participation in the UCLA program.

2. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant's mother requested a fair hearing to appeal the Service Agency's denial of funding for claimant's participation in the FACT program and its denial of reimbursement for claimant's participation in the UCLA program. Jurisdiction in this case was thus established. (Factual Findings 4-6.)

3. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is entitled to the funding denied by the Service Agency. (Evid. Code, § 115.)

4. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers such as the Service Agency play a critical role in the coordination and delivery of services and supports. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

5. Section 4512, subdivision (b), defines the role of the IPP process as follows:

The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . .

6. Services and supports may include “social skills training . . . [and] training for parents of children with developmental disabilities.” (§ 4512, subd. (b).) The Lanterman Act assigns a priority to services that will maximize the consumer’s participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).) Section 4685 states “[i]t is the intent of the Legislature that regional centers provide or secure family support services that . . . promote the inclusion of children with disabilities in all aspects of school and community.” (§ 4685, subd. (b)(5).)

7. Regional centers have a legal duty to monitor the delivery of services to their clients. (§ 4646.5.) Periodic reviews of services afford the service agency the opportunity to ascertain whether planned services have been provided, whether additional services are needed, and whether the consumer and his or her family are satisfied with the implementation of the IPP. (§ 4646.5, subd. (a)(6).) The planning process is intended to set forth a statement of goals, with objectives stated “in terms that allow measurement of progress or monitoring of service delivery.” (§ 4646.5, subd. (a)(2).)

8. Claimant, whose social skills deficits have resulted in his being the victim of frequent bullying and social ostracizing, has benefitted from his participation in the FACT and the UCLA social skills programs. Generic programs recommended by the Service Agency have not proved adequate to address claimant’s needs. Service Agency funding for claimant’s further participation in the FACT program is warranted. Also warranted is an assessment by FBS of claimant’s social skills deficits and development of a proposed program to address claimant’s deficits in the community and across different environments. Because the Service Agency, however, did not have an opportunity to explore with claimant’s family, through the prescribed IPP process, the appropriateness of claimant’s participation in the UCLA program before he was enrolled, the Service Agency is not obligated to reimburse claimant’s parents for the costs of that program. (Factual Findings 3, 4, 7, 9, 13-16.)

## ORDER

The appeal by claimant P. P. is granted in part and denied in part.

The Service Agency shall fund claimant’s further participation in the FACT program from the effective date of this Order until such time as changed circumstances or another IFSP warrant otherwise. That funding is conditioned on claimant’s mother cooperating reasonably with the Service Agency’s efforts to arrange an assessment of claimant’s social skills needs by FBS. Nothing in this Order shall be deemed to prejudice claimant’s rights to contest the results of that assessment or any intervention plan based on that assessment.



The Service Agency is not required to reimburse claimant's parents for claimant's participation in the UCLA program.

DATED: July 5, 2011

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HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

**This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**